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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 204.

DANIEL BROWN, PLAINTIFF IN ERROR,

VS.

JOSHUA S. BRACKETT ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED OCTOBER 1, 1873.

Oct. 2. 1874

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1 In the seventh district court of the State of California, county of Marin.

DANIEL BROWN
vs.
JOSHUA S. BRACKETT, JOB BATCHELDOR, J. G. Mayer, H. A. Heineken, Jethro Dodson, Joseph Dodson, Louis Pedrazzini, ——— Palmer, ——— Fuller, Antonio Canapa, Angelo Canapa, Louis Canapa, Lorenzo Martinello, J. H. Ink, ——— Watson, Jeremiah Cary, George Rodgers, William Brown, Jeremiah King, Frank Tagniati, —— —— Deunidie, Thereon Ink, S. N. Ink, John Doe, (number one to ten, inclusive.)

Complaint.

Daniel Brown, the plaintiff above named, comes and complains
2 of the above-named defendants, and states that the true names
of the defendants he has declared against as John Doe, numbers one to ten, inclusive, are unknown to this plaintiff; he therefore prays that, when their true names are ascertained, that the same may be inserted in the complaint, upon motion as defendants.

And the said plaintiff further complains of the above-named defendants, and states that, heretofore, viz, *that*, on the first day of September, 1871, he was seized in fee-simple and the owner, and was entitled to the possession of a certain tract of land lying and being in the county of Marin, which was originally granted by the Mexican Government by the name of Soulajulle, to one Ramon Mesa, on the twenty-ninth of March, 1844, which tract so granted has been declared and adjudged to be a valid claim by the proper authorities of the United States, under the provisions of the act of Congress approved and bearing date the third of March, 1851, and entitled, "An act to settle private land-claims in California," and which said tract so as aforesaid declared to be a valid grant and claim is bounded and described as follows, viz: Beginning on the northerly line of the rancho Corte Madera de Novato, as surveyed and patented to John Martin, deceased, distant 17 chains north 36¼ degrees west from a post at the commencement of course number eleven, called for in said survey; thence north along the west line of sections numbers thirty-one, thirty, and nineteen, township 4 north, range 7 west, M. D. B. and M., as surveyed and established by G. H. Thompson, U. S. deputy surveyor, November 7, 1866, one hun-
3 dred and thirty-five chains, to a stake set on the centre of the west
line of said section 19 as the half-mile stake in its subdivision; thence south 87½° west, 98 chains 50 links; thence south 77¾° west, 45 chains 50 links; thence north 85¾° west, 29 chains; thence north 59¼° west, 83 chains; thence south 82½° west, 124 chains; thence south 64¼° west, 61 chains, to the commencement of course number six, as called for on the north line of Robert C. Matthewson's survey of the said rancho Soulajulle, made in August, 1859; thence with said Matthewson's said survey north 12° west, 85 chains 70 links, to post in a group of rocks, as called for in said survey; thence north 68¾° west, 50 chains, to post in stone mound also called for in said survey; thence south 88¼° west,

60 chains and 20 links, to a stone mound also called for in said survey; thence south 44¾° west, 28 chains, to a stone mound also called for in said survey; thence north 64° west, 102 chains 60 links, to a post in a stone mound also called for in said survey; thence north 83½° west, 41 chains and 40 links, to a post in mound called for in said survey; thence south 66° west, 21 chains, to post in mound as called for in said survey; thence south 20¼° west, 73 chains, to a post in stone mound, (high knoll, group of rocks,) also called for in said survey; thence south 35½° east, 90 chains 80 links, to post in stone mound also called for in said survey; thence south 51° east, 210 chains 20 links, to post in mound with trenches, as also called for in said survey; thence south 64° east, 180 chains, to a post as called for in said survey; thence south 44° east,
160 chains, to post as called for in said survey; thence north 66½°
4 east, 160 chains, to post set for the southeast corner of said rancho
Soulajulle, also called for in said survey; thence north 34½° east, 232 chains 30 links, to post set for the northwest corner of the rancho Corte Madera de Novato; thence along the northerly line of said rancho Corte Madera de Novato south 36¼° east, 106 chains 80 links, to the place of beginning.

The plaintiff further charges that he is still seized in fee-simple, and is the owner and entitled to the possession of the above-described claim or tract of land so declared and adjudged to be a valid claim, as before stated and set forth, and has ever since and still is so seized, and the owner and entitled to the possession thereof; and that afterward, viz, on the tenth day of September, 1871, and whilst the said plaintiff was so seized and the owner and entitled to the possession of said claim or tract of land above described, the said defendants wrongfully and unlawfully entered into the possession of the said tract of land, and ousted and ejected the said plaintiff therefrom, and unlawfully and wrongfully have ever since withheld the possession thereof from the said plaintiff. Wherefore he sues and prays for judgment against the said defendants for the possession of the said land and a writ of restitution of the premises, and his costs and disbursements.

JOHN WILSON,
Attorney of the Plaintiff,
No. 637 Washington Street, San Francisco.

[Duly verified.]

5 *Answer.—Title of court and cause.*

Joshua S. Brackett, Charles H. Thatford, Martino Cristofanini, Felippini Paolo, and Moretti Michele, defendants in the above-entitled action, (the said Charles H. Thatford, Martino Cristofanini, Felippini Paolo, and Moretti Michele, being sued therein under fictitious names,) in answer to the complaint of the plaintiff in said action—

1. Deny that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized in fee-simple or otherwise, or was the owner, or was entitled to the possession of the lands described in the complaint, or any part thereof; and

2. Deny, except as hereinafter stated, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in said complaint, or any part thereof.

3. They state that the Mexican government made a grant to Ramon Mesa of an inchoate title to a portion of the lands described in said complaint, but no other title.

4. They deny that said grant has, in any court, or by any authority, been adjudicated or declared to be a valid claim.

5. They state that six distinct parts and parcels of said tract of land have separately and individually been adjudicated, and the claims thereto have been adjudged and declared valid ; but no adjudication or judgment has ever been had upon said grant as a whole or entirety.

6 6. They deny, upon information and belief, that said grant to Ramon Mesa was of all of the lands bounded specifically in said complaint; but allege that said boundaries in said complaint include tracts of land not included in said grant.

7. They deny that said plaintiff is, or was at the commencement of this action, seized in fee-simple, or otherwise, or is the owner, or was at the time of the commencement of this action the owner, or is entitled to the possession, or was at the commencement of this action entitled to the possession, of the lands described in the complaint herein, or any part thereof.

8. They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, ousted or ejected said plaintiff from said land, or from any part thereof.

9. They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, wrongfully or unlawfully withheld, or since said time, or at any time, wrongfully or unlawfully withheld the possession of said lands, or any part thereof, from the plaintiff.

10. They deny that, on the tenth day of September, or since that day, or at any time, they themselves, or in conjunction with another or others, withheld the possession of said lands, described in the complaint, from the plaintiff, or any part thereof, except the part or portion thereof described following, viz:

Being about 2,800 acres of land, and being bounded on the south by the southerly side line of the survey of the rancho Soulajulle,
7 made by Robert C. Matthewson, referred to in said complaint; on the west by lands of the estate of John P. Buckley, deceased, and lands of W'm Brown; on the north by lands of E. Light, and lands of D. S. Frasier, and lands of J. McBrown; and on the east by land of Theron H. Ink.

And as to said part and portion of land, said defendants allege that they are in possession thereof. That said defendant Joshua S. Brackett is, and for the past ten years has been, the owner in fee thereof, and entitled to the possession of the same; and that said defendants Charles H. Thatford, Martino Cristofanini, Felippini Paolo, and Moretti Michele, are in possession of parts of the same under, and as tenants of, Joshua S. Brackett, defendant herein.

11. And for a further and separate defense, said defendants allege that neither the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of that part of the lands described in the complaint, hereinbefore specifically described and bounded, or of any part thereof, within five years next preceding the commencement of this action.

12. And for a further and separate defense, said defendants allege that, for more than ten years next preceding the commencement of this action, the said Joshua S. Brackett, by himself and his tenants, has been in the notorious, exclusive, continuous, and actual possession of all that part or portion of the land described in the complaint, hereinbefore specifically bounded and described, holding and claiming the

same adversely to all persons and titles, and during all of said time has exercised open and notorious acts of ownership over the same.

8 Wherefore said defendants demand judgment against said plaintiff, and for their costs herein.

F. D. COLTON,
Attorney for said defendants Joshua S. Brackett,
Charles H. Thatford, Martino Cristofanini,
Felippini Paolo, and Moretti Michele.

The answer is duly verified; but I omit the verification in this copy, supposing you would not care for a copy of that. All the answers will be filed to-morrow, and I want to try the case Saturday, if possible.

San Rafael, March 7th, 1872.

F. D. COLTON.

Answer.—Title of court and cause.

Theron H. Ink, J. S. Watson, and D. Fuller, defendants in the above-entitled action, in answer to the complaint of the plaintiff therein, deny that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized, in fee-simple or otherwise, or was the owner or was entitled to the possession of the lands described in the complaint, or any part thereof; and deny, except as hereinafter stated, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in said complaint, or any part thereof.

They state that the Mexican government made a grant to Ramon Mesa of an inchoate title to a portion of the lands described in said complaint, but no other title.

9 They deny that said grant has, in any court or by any authority, been adjudicated or declared to be a valid claim.

They state that six distinct parts and parcels of said tract of land have separately and individually been adjudicated, and the claims thereto have been adjudged and declared valid; but no adjudication has ever been had upon said grant as a whole or entirety.

They deny, upon information and belief, that said grant to Ramon Mesa was of all the lands bounded specifically in said complaint; but allege that said boundaries in said complaint include tracts of land not included in said grant.

They deny that said plaintiff is, or was at the commencement of this action, seized in fee-simple or otherwise, or is, or was at the time of the commencement of this action, the owner, or is, or was at the commencement of this action, entitled to the possession of the lands described in the complaint, or any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any time, the said defendants themselves, or in conjunction with another or others, ousted or ejected said plaintiff from said lands, or from any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, wrongfully or unlawfully withheld, or since said time, or at any time, wrongfully or unlawfully withheld the possession of said lands, or any part thereof, from the plaintiff.

They deny that, on the tenth day of September, A. D. 1871,
10 or since that day, or at any time, they themselves, or in conjunction with another or others, withheld the possession of said

lands, described in the complaint, from the plaintiff, or any part thereof, except the part or portion thereof described following, viz:

Being about 2,200 acres of land, bounded on the north by land of J. S. Brackett and land of J. McBrown; on the east, by land of Louis Pedrozzini; on the south by the southerly side-line of the survey made by Robert C. Matthewson, referred to in said complaint; and on the west by land of J. S. Brackett. And as to said part and portion of land, said defendants allege that they are in possession thereof. That said defendant Theron H. Ink is, and for the past six years has been, the owner, seized in fee-simple thereof, and entitled to the possession of the same; and that said defendants J. S. Watson and David Fuller are in possession of parts of the same, under and as tenants of said Theron H. Ink.

And for a further and separate defense, said defendants allege that neither the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of that part of the lands described in the complaint, hereinbefore specifically described and bounded, or any part therof, within five years next preceding the commencement of this action.

And for a further and separate defense, said defendants allege that, for more than ten years next preceding the commencement of this action, the said Theron H. Ink, and his grantor, by themselves and their tenants, have been in the notorious, actual, exclusive, and contin-
11 uous possession of all of that part or portion of the land described
in the complaint, hereinbefore specifically described and bounded, holding and claiming the same adversely to all persons and titles, and, during all of said time, have exercised open and notorious acts of ownership over the same.

Wherefore said defendants demand judgment against said plaintiff, and for their costs herein.

F. D. COLTON,
Attorney for said defendants, Theron H. Ink,
J. S. Watson, and David Fuller.

[Duly verified.]

Answer.—Title of court and cause.

A. Dado, and Peter Tonini, defendants in the above-entitled action, sued therein under fictitious names, in answer to the complaint of the plaintiff therein—

Deny that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized, in fee-simple or otherwise, or was the owner, or was entitled to the possession of the lands described in the complaint, or any part thereof.

They deny, upon information and belief, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in the complaint, or any part thereof. They deny, upon information and belief, that any grant to Ramon Mesa has ever, by any authority, been adjudged or declared valid.

They deny that said plaintiff is, or was at the commencement
12 of this action, seized in fee-simple or otherwise, or is, or was at
the time of the commencement of this action, the owner, or is, or was at the time of the commencement of this action, entitled to the possession of the lands described in the complaint, or any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, ousted or ejected said plaintiff from the lands described in the complaint, or from any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, wrongfully or unlawfully withheld the possession of said lands or any part thereof, from the plaintiff.

They deny that, on the tenth day of September, A. D. 1871, or since that day, or at any time, they, themselves, or in conjunction with another or others, withheld the possession of said lands from the plaintiff, or any part threof, except the part or portion thereof described following, viz: Said part or portion being about 300 acres of land, and being bounded on the north and northwest and west by the northerly sideline of the land described in the complaint, and on the south and east by land occupied by J. McBrown and his tenants.

And as to said part and portion of said land, said defendants allege that they are in possession thereof, as tenants of Charlotte L. Willson, as executrix of the estate of A. T. Willson, deceased. That said land was owned in fee by said A. T. Willson, in his life-time, and is a part of his estate.

And, for a further and separate defense, said defendants allege
13 that neither the plaintiff, his ancestor, predecessor, or grantor, was
seized or possessed of that part of the land described in the complaint hereinbefore specifically described and bounded, or any part thereof, within five years next preceding the commencement of this action.

And, for a further and separate defense, said defendants allege that, from the first day of January, A. D. 1860, to the day of the death of said A. T. Willson, September 27th, A. D. 1870, the said A. T. Willson was in the notorious, actual, exclusive, and continuous possession of all that part or portion of the land described in the complaint hereinbefore specifically described and bounded, holding and claiming the same adversely to all persons and all titles, and during all of said time exercised open and notorious acts of ownership over the same.

Wherefore said defendants demand judgment against said plaintiff, and for their costs herein.

T. D. COLTON,
Att'y for Def'ts A. Dado and P. Tonini.

[Duly verified.]

Answer.—Title of court and cause.

J. M. Fiori and Antonio Fiori, defendants in the above-entitled action, sued therein under fictitious names, in answer to the complaint of the plaintiff therein, deny that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized in fee-simple or otherwise, or was the owner, or was entitled to the possession of the
14 lands described in the complaint, or any part thereof; and deny,
except as hereinafter stated, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in said complaint, or any part thereof. They state that the Mexican government made a grant to Ramon Mesa of an inchoate title to a portion of the lands described in the complaint, but no other title.

They deny that said grant has, in any court or by any authority, been adjudicated, or declared to be a valid claim.

They state that six distinct parts and parcels of said tract of land have separately and individually been adjudicated, and the claims thereto have been adjudged and declared valid; but no adjudication has ever been had upon said grant as a whole or entirety.

They deny that said plaintiff is, or was at the commencement of this action, seized in fee-simple or otherwise, or is, or was at the time of the commencement of this action, the owner, or is, or was at the commencement of this action, entitled to the possession of the lands described in the complaint, or any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, ousted or ejected said plaintiff from said lands, or from any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any
other time, the said defendants themselves, or in conjunction with
15 another or others, wrongfully or unlawfully withheld, or since said
time, or at any time, wrongfully or unlawfully withheld the possession of said lands, or any part thereof, from the plaintiff.

They deny that, on the tenth day of September, A. D. 1871, or since that day, or at any time, they themselves, or in conjunction with another or others, withheld the possession of said lands described in the complaint, or any part thereof, from the plaintiff, except the part or portion thereof described following, viz: Being about six hundred and sixty-seven acres of land, bounded on the north by land of S. A. Marshall and J. Marshall; on the east by land of W'm Brown, and by land of the estate of J. P. Buckley; on the south by land of George Laird, and land of S. A. Marshall and J. Marshall; and on the west by land of S. A. Marshall and J. Marshall. And as to said land, said defendants allege that they are, and for more than one year last past have been, the owners of the same in fee-simple.

And for a further and separate defense, said defendants allege that neither the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of that part of the land described in the complaint, hereinbefore specifically bounded and described, or any part thereof, within five years next preceding the commencement of this action.

And for a further and separate defense, said defendants allege that, for more than five years next preceding the commencement of this action, they and their grantors have been in the notorious, actual, exclusive, and continuous possession of all that part of the land described
in the complaint, hereinbefore specifically bounded and described,
16 holding and claiming the same adversely to all persons and titles,
and, during all of said time, have exercised open and notorious acts of ownership over the same.

Wherefore they pray judgment against the plaintiff, and for their costs.

F. D. COLTON,
Attorney for Defendants Fiori.

[Duly verified.]

Answer.—Title of court and cause.

David Muscio, one of the defendants in the above-entitled action, sued therein under a fictitious name, in answer to the complaint of the plaintiff therein, denies that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized in fee-simple or otherwise, or was the owner, or was entitled to the possession of the lands described in the complaint, or any part thereof; and denies, except as hereinafter stated, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in said complaint, or any part thereof.

He states that the Mexican government made a grant to Ramon Mesa of an inchoate title to a portion of the lands described in the complaint, but no other title. He denies that said grant has, in any court or by any authority, been adjudicated or declared to be a valid claim.

He states that six distinct parts and parcels of said tracts of land
have separately and individually been adjudicated, and the claims
17 thereto have been adjudged and declared valid; but no adjudication has ever been had upon said grant as a whole or entirety.

He denies that the said plaintiff is, or was at the commencement of this action, seized in fee-simple or otherwise, or is, or was at the time of the commencement of this action, the owner, or is, or was at the commencement of this action, entitled to the possession of the lands described in the complaint, or any part thereof.

He denies that, on the tenth day of September, A. D. 1871, or at any other time, he himself, or in conjunction with another or others, ousted or ejected said plaintiff from said lands, or from any part thereof.

He denies that, on the tenth day of September, A. D. 1871, or at any other time, he himself, or in conjunction with another or others, wrongfully or unlawfully, or since said time, or at any time, wrongfully or unlawfully withheld the possession of said lands, or any part thereof, from said plaintiff.

He denies that, on the tenth day of September, A. D. 1871, or since that day, or at any time, he himself, or in conjunction with another or others, withheld the possession of said lands described in the complaint from the plaintiff, or any part thereof, except the part thereof described following, viz: Being about eight hundred acres of land, and being bounded on the northwest and south by the Nicasio Rancho, and on the east by land of J. M. Fiori and Antonio Fiori.

And as to said lands, said defendant alleges that he is in pos-
18 session thereof as tenant of S. A. Marshall and J. Marshall; that
said S. A. Marshall and J. Marshall are, and for more than one year next preceding the commencement of this action, and ever since have been, the owners in fee of said land.

And said defendant, for a further and separate defense, alleges that neither the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of that part of the land described in the complaint hereinbefore particularly bounded and described, or any part thereof, within five years next preceding the commencement of this action.

And, for a further and separate defense, said defendant alleges that, for more than five years next preceding the commencement of this action, the said S. A. Marshall and J. Marshall, and their grantors, by themselves and their tenants, have been in the actual, notorious, exclusive, and continuous possession of that part of the lands described in the complaint, hereinbefore specifically bounded and described, holding and claiming the same adversely to all persons and titles, and, during all of said time, have exercised open and notorious acts of ownership over the same.

Wherefore said defendant prays judgment against said plaintiff, and for costs.

F. D. COLTON,
Attorney for Defendant D. Muscio.

[Duly verified.]

19 *Answer.—Title of court and cause.*

Natali Giacomini, Louis Canapa, and A. F. Bradley, defendants in the above-entitled action, (the said Natali Giacomini and A. F. Bradley being sued therein under fictitious names,) in answer to the complaint of the plaintiff therein—

Deny that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized in fee-simple or otherwise, or was the owner, or was entitled to the possession of the lands described in the complaint, or any part thereof; and deny, on information and belief, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in said complaint, or any part thereof.

They deny, on information and belief, that any grant to Ramon Mesa, or any part of the lands described in said complaint, has ever, by any authority, been adjudicated or declared valid, or declared to be a valid claim.

They deny that said plaintiff is, or was at the commencement of this action, seized in fee-simple or otherwise, or is, or was at the commencement of this action, the owner, or is, or was at the commencement of this action, entitled to the possession of the lands described in the complaint, or any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, ousted or rejected said plaintiff from said lands, or from any part thereof.

20 They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, wrongfully or unlawfully withheld, or since said time, or at any time, wrongfully or unlawfully withheld the possession of said lands, or any part thereof, from the plaintiff.

They deny that, on the tenth day of September, A. D. 1871, or since that day, or at any time, they themselves, or in conjunction with another or others, withheld the possession of said lands described in the complaint, or any part thereof, except the part or partition thereof described following, viz: Being about three hundred and twenty acres of land, and being the southeast quarter of the southeast quarter of section 24, and the northeast quarter of section 25, and the north half of the southeast quarter of section 25, and the fractional south half of the southeast quarter of section 25, all in township 4 north, range 8 west, Mount Diablo meridian, according to the United States Government surveys.

And as to said land, they say that they or their lessors are, and for more than one year last past have been, the owners of said land.

And, for a further and separate defense, said defendants allege that neither the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of that part of the land described in the complaint, hereinbefore specifically bounded and described, or any part thereof, within five years next preceding the commencement of this action.

And, for a further and separate defense, said defendants allege

21 that, for more than five years next preceding the commencement of this action, they, their lessors and grantors, have been in the notorious, actual, exclusive, and continuous possession of all that part of the land described in the complaint, hereinbefore specifically described, each of a distinctive part thereof, holding and claiming the same adversely to all persons and titles, and, during all of said time, have exercised open and notorious acts of ownership over the same.

Wherefore, they pray judgment against said plaintiff, and for their costs.

F. D. COLTON,
Attorney for Defendants Bradley, Giacomini, Louis Canapa.

[Duly verified.]

Answer.—Title of court and cause.

The defendants Jethro Dodron, and James N. Noble, who is sued by the name of John Doe, appear by their attorneys, F. D. Colton and A. Thomas, and, by way of answer to the plaintiff's complaint, deny that the said plaintiff, on the first day of September, 1871, or at any other time, was seized in fee-simple or otherwise, or was the owner, or was entitled to the possession of the land described in the complaint, or any part thereof.

They deny, upon information and belief, that any grant to Ramon Mesa has ever, by any authority, been adjudged and declared valid, to the land described in plaintiff's complaint. They deny that said plaintiff is, or was, at the commencement of this action, seized in fee-
22 simple or otherwise, or is, or was at the time of the commencement of this action, the owner, or is, or was at the time of the commencement of this action, entitled to the possession of the land described in the complaint, or any part thereof. They deny that, on the tenth day of September, 1871, or at any other time, these defendants, or either of them, ousted or ejected the said plaintiff from the land described in the complaint, or from any part thereof. They deny that, on the tenth day of September, 1871, or at any other time, these defendants, or either of them, wrongfully or unlawfully withheld the possession of the said land, or any part thereof, from plaintiff.

These defendants deny that, on the tenth day of September, 1871, or at any other time, they, or either of them, withheld the possession of any portion of the land described in plaintiff's complaint, except the following described tract, to wit, commencing at the northwest corner of a tract of land purchased by George N. Cornwall and L. D. Walkins from Ramon Mesa, on the sixth day of December, 1849; thence running east one mile; thence south one mile; thence west one mile; thence north one mile, to the place of beginning, containing six hundred and forty acres of land. And as to said portion of said land, these defendants allege that they are in possession thereof as tenants of Abraham Fine. That said land is owned by said Fine.

And, for a further and separate defense, these defendants allege that neither the plaintiff, his ancestor, predecessor, or grantor, was
23 seized or possessed of that part of the land described in the complaint, last above particularly described and bounded, or any part thereof, within five years next preceding the commencement of this action.

And, for a further and separate defense, these defendants allege that the said Abraham Fine entered into the possession of the last above-described tract of land under claim of title exclusive of all other right, and that there has been a continued adverse occupation and possession of the premises last above described, by the said Fine, and these defendants, as the tenants of said Fine, holding the same adversely to all the world for more than five years next before the institution of this action.

Wherefore these defendants demand judgment against the said plaintiff for their costs herein.

F. D. COLTON AND
A. THOMAS,
Attorneys for Defendants.

[Duly verified.]

H. A. Heinecken and Joseph Dodson, defendants in the above-entitled action, in answer to the complaints of the plaintiff therein, deny that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized in fee-simple or otherwise, or was the owner, or entitled to the possession of the lands described in the complaint, or any part thereof. They deny, except as hereinafter stated, that the
Mexican government ever granted or conveyed to Ramon Mesa
24 the lands described in said complaint, or any part thereof. They
state that the Mexican government made a grant to Ramon Mesa
of an inchoate title to a portion of the lands described in said complaint, but no other title.

They deny that said grant has, in any court or by any authority, been adjudicated or declared to be a valid claim.

They state that six distinct parts and parcels of said tract of land have separately and individually been adjudicated, and the claims thereto have been adjudged and declared valid; but no adjudication has ever been had upon said grant as a whole or entirety.

They deny that said plaintiff is, or was at the commencement of this action, seized in fee-simple or otherwise, or is, or was at the commencement of this action, the owner, or is, or was at the commencement of this action, entitled to the possession of the lands described in the complaint, or any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, ousted or ejected said plaintiff from said lands, or from any part thereof.

They deny that, on the tenth day of September, A. D. 1871, or at any other time, the said defendants themselves, or in conjunction with another or others, wrongfully or unlawfully withheld, or since said time, or at any time, wrongfully or unlawfully withheld the possession of
said lands, or any part thereof, from said plaintiff.

25 They deny that, on the tenth day of September, A. D. 1871, or
since that time, or at any time, they themselves, or in conjunction
with another or others, withheld the possession of the said lands from the plaintiff, or any part thereof, except the part thereof described following, viz: Being about nine hundred acres of land, bounded on the north by land occupied by A. Fine, and land occupied by J. McBrown; on the east by land of J. McBrown; on the south by land of S. A. Marshall, being the Cornwall tract, so-called; and on the west by land of Fine and land of Louis Pedrozzini.

And, as to said land, said defendants allege that said H. A. Heineken is, and for the year last past has been, the owner in fee thereof; that said Joseph Dodson is only a tenant of said H. A. Heineken.

And, for a further and separate defense, said defendants allege that neither the plaintiff, his ancestor, predecessor, or grantor, was seized or possessor of that part of the lands described in the complaint, hereinbefore specifically bounded and described, or any part thereof, within five years next preceding the commencement of this action.

And, for a further and separate defense, said defendants allege that, for more than five years next preceding the commencement of this action, the said H. A. Heineken and his grantors have been in the notorious, actual, exclusive, and continuous possession of all that part of the land described in the complaint, hereinbefore specifically bounded and described, holding and claiming the same adversely to all persons and titles, and, during all of said time, have exercised open and notorious acts of ownership over the same.

26 Wherefore they pray judgment against the plaintiff, and for their costs.

F. D. COLTON,
Att'y for Defendants Heineken and Joseph Dodson.

[Duly verified.]

Answer.—Title of court and cause.

Louis Pedrozzini, one of the defendants in the above-entitled action, in answer to the complaint of the plaintiff therein—

Denies that said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized in fee-simple or otherwise, or was the owner, or was entitled to the possession of the lands described in the complaint, or any part thereof; and

Denies, except as hereinafter stated, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in said complaint, or any part thereof.

He denies, except as hereinafter stated, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in said complaint, or any part thereof. He states that the Mexican government made a grant to Ramon Mesa of an inchoate title to a portion of the lands described in said complaint, but no other title.

He denies that said grant has, in any court or by any authority, been adjudicated or declared to be a valid claim.

27 He states that six distinct parts and parcels of said tract of land have separately and individually been adjudicated, and the claims thereto have been adjudged and declared valid; but no adjudication has ever been had upon said grant as a whole or entirety.

He denies that said plaintiff is, or was at the commencement of this action, seized in fee-simple or otherwise, or is, or was at the time of the commencement of this action, the owner, or is, or was at the commencement of this action, entitled to the possession of the lands described in the complaint, or any part thereof.

He denies that, on the tenth day of September, A. D. 1871, or at any other time, he himself, or in conjunction with another or others, ousted or ejected said plaintiff from said lands, or from any part thereof.

He denies that, on the tenth day of September, A. D. 1871, or at any other time, he himself, or in conjunction with another or others, wrongfully or unlawfully withheld, or since said time, or at any time, wrongfully or unlawfully withheld the possession of said lands, or any part thereof, from said plaintiff.

He denies that, on the tenth day of September, A. D. 1871, or since that day, or at any time, he himself, or in conjunction with others or another, withheld the possession of said lands described in the complaint from said plaintiff, or any part thereof, except the part thereof described following, viz: Being about nine hundred acres of land, bounded north by the survey of the rancho Laguna de San Antonio;
on the east by the land of A. Fine, and land of H. Heineken,
28 and land of S. A. Marshall; on the south by land of Theron H.
Ink, and by the land of the rancho Nicasio; and on the west by land of Theron H. Ink.

And as to said land he says that he is, and for the year last past has been, the owner in fee and in possession of the same.

And, for a further and separate defense, said defendant alleges that neither the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of that part of the land described in the complaint, hereinbefore specifically bounded and described, or any part thereof, within five years next preceding the commencement of this action.

And, for a further and separate defense, said defendant alleges that for more than five years next preceding the commencement of this action, he and his grantor have been in the actual, exclusive, notorious, and continuous possession of all of that part of the land described in the complaint, hereinbefore specifically bounded and described, holding and claiming the same adversely to all persons and titles, and, during all of said time, have exercised open and notorious acts of ownership over the same.

Wherefore said defendant demands judgment against said plaintiff, and for his costs.

F. D. COLTON,
Attorney for Defendant Louis Pedrozzini.

[Duly verified.]

29 *Answer.—Title of court and cause.*

Pietro Tomasini, one of the defendants in the above-entitled action, sued therein under a fictitious name, in answer to the complaint of the plaintiff therein, denies that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized in fee-simple, or otherwise, or was the owner, or entitled to the possession of the lands described in the complaint, or any part thereof; and denies, except as hereinafter stated, that the Mexican government ever granted or conveyed to Ramon Mesa the lands described in said complaint or any part thereof.

He states that the Mexican government made a grant to Ramon Mesa of an inchoate title to a portion of the lands described in the complaint, but no other title.

He denies that said grant has, in any court, or by any authority, been adjudicated or declared to be a valid claim.

He states that six distinct parts and parcels of said tract of land have separately and individually been adjudicated, and the claims thereto have been adjudicated and declared valid, but no adjudication has ever been had upon said grant as a whole or an entirety.

He denies that said plaintiff is, or was at the commencement of this action, seized in fee-simple, or otherwise, or is, or was at the time
of the commencement of this action, the owner, or is, or was at
30 the commencement of this action, entitled to the possession of
the lands described in the complaint, or any part thereof.

He denies that, on the tenth day of September, A. D. 1871, or at any other time, he himself, or in conjunction with another or others, wrongfully or unlawfully withheld, or since said time, or any time, wrongfully or unlawfully withheld the possession of said lands, or any part thereof, from the plaintiff.

He denies that, on the tenth day of September, A. D. 1871, or since that day, or *or* at any other time, he himself, or in conjunction with another or others, withheld the possession of said land from the plaintiff, or any part thereof, other than the part thereof described following, viz: Being about one thousand acres of land, bounded on the south by the rancho Nicasio; on the west by land of Louis Pedrozzini; on the north by land of H. A. Heinecken; and on the east by land of J. McBrown.

And as to said land, said defendant alleges that he is in possession thereof under and as a tenant of S. A. Marshall; that said S. A. Marshall is, and for the two years last past has been, the owner in fee of the same.

And, for a further and separate defense, said defendant alleges that neither the plaintiff, his ancestors, predecessors, or grantor, was seized or possessed of that part of the land described in the complaint hereinbefore specifically described and bounded, or any part thereof, within five years next preceding the commencement of this action.

And, for a further and separate defense, said defendant alleges
31 that, for more than five years next preceding the commencement
of this action, the said S. A. Marshall and his grantors, by themselves and their tenants, have been in the actual, notorious, exclusive, and continuous possession of all that part of the land described in the complaint hereinbefore specifically bounded and described, holding and claiming the same adversely to all persons and titles, and during all of *all* time have exercised open and notorious acts of ownership over the same.

Wherefore said defendant prays judgment against said plaintiff, and for his costs.

F. D. COLTON,
Attorney for Defendant P. Tomasini.

[Duly verified.]

Answer.—Title of court and cause.

Frank Tognazzi, one of the defendants in the above-entitled action, sued therein under the name of Frank Togniati, in answer to the complaint of the plaintiff therein—

Denies that the said plaintiff, on the first day of September, A. D. 1871, or at any other time, was seized in fee-simple, or otherwise, or was the owner, or was entitled to the possession of the lands described in the complaint, or any part thereof; and denies, except as hereinafter stated, that the Mexican government ever granted or conveyed to Ramon Meza the lands described in the complaint, or any part thereof.

He states that the Mexican government made a grant to Ra-
32 mon Mesa of an inchoate title to a portion of the lands described
in said complaint, but no other title. He denies that said grant has, in any court or by any authority, been adjudicated or declared to be a valid claim.

He states that six distinct parts and parcels of said tract of land have, separately and individually, been adjudicated, and the claims thereto have been adjudged and declared valid, but no adjudication has ever been had upon said grant as a whole or entirety.

He denies that said plaintiff is, or was at the commencement of this action, seized in fee-simple, or otherwise, or is, or was at the time of commencing this action, the owner, or is, or was at the commencement of this action, entitled to the possession of the lands described in the complaint, or any part thereof. He denies that, on the tenth day of September, A. D. 1871, or at any other time, he himself, or in conjunction with another or others, ousted or ejected said plaintiff from said lands, or from any part thereof. He denies that, on the tenth day of September, A. D. 1871, or at any other time, he himself, or in conjunction with another or others, wrongfully or unlawfully withheld, or since said time, or at any time, wrongfully or unlawfully withheld the possession of said lands, or any part thereof, from said plaintiff.

He denies that, on the tenth day of September, A. D. 1871, or since that day, or at any time, he himself, or in conjunction with another or others, withheld the possession of said lands, or any part thereof, from the plaintiff, except the part thereof described following, viz: Being about 1,300 acres of land, and being bounded on the north by
33 the Nicasio Rancho; on the east by the land of the estate of J.
P. Buckley; on the south by the Soulajulle Creek, otherwise called Salmon Creek, and lands of the estate of J. P. Buckley; on the west by lands occupied by David Muscio.

And as to said part and parcel of land, said defendant alleges that he is in the possession thereof; that he is so in possession under and as tenant of William Brown; that said William Brown is, and for the past ten years next preceding the commencement of this action has been, the owner thereof, claiming title thereto.

And, for a further and separate defense, said defendant alleges that neither the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of that part of the lands described in the complaint hereinbefore specifically described and bounded, or any part thereof, within five years next preceding the commencement of this action.

And, for a further and separate defense, said defendant alleges that he is the tenant of William Brown, and is in the possession of said last-described land under and as a tenant of William Brown, and that for more than ten years next preceding the commencement of this action, the said William Brown and his grantors, by himself and his tenants, has been in the notorious, actual, exclusive, and continuous possession of all that part or portion of the land described in the complaint hereinbefore specifically described and bounded, holding and claiming the same adversely to all persons and titles, and during all of said time has exercised open and notorious acts of ownership over the same.

34 Wherefore said defendant demands judgment against said
plaintiff, and for his costs.

F. D. COLTON,
Attorney for Defendant Tognazzi.

[Duly verified.]

Answer.—Title of court and cause.

And now come the defendants, Jeremiah Carey and George Rodgers, and for their joint and several answer to the complaint of the above-named plaintiff in this action, by Gray & Haven, their attorneys—

I. They deny each and every, all and singular, the allegations in said complaint contained.

II. They deny that, on the first day of September, 1871, or at any other time, the plaintiff was seized in fee-simple, or was the owner, or was entitled to the possession of the premises described in plaintiff's complaint, or any part thereof.

They deny that the, or any tract of land, which was originally granted by the Mexican government, by the name Soulajulle, to one Ramon Mesa, on the twenty-ninth day of March, 1844, or at any other date, has been declared or adjudicated to be a valid claim by any authorities of the United States, or under any act of Congress of the United States.

They deny that any claim of Ramon Mesa, either now or heretofore existing, to the land described in the plaintiff's complaint, has been lawfully declared or adjudicated to be a lawful and valid claim.

35 They deny that plaintiff is, or was at the commencement of this
action, seized in fee-simple, or is, or was at the commencement of

this action, the owner, or entitled to the possession of that portion of the premises described in plaintiff's complaint, which is hereinafter described.

They deny that, on the tenth day of September, 1871, or at any other time, the defendant wrongfully or unlawfully entered into the possession of the land described in plaintiff's complaint, or any part thereof, or ousted or ejected the said plaintiff therefrom, or from any part thereof.

III. And, for a further and separate answer to plaintiff's said complaint, the defendants aver that, on the said first day of September, 1871, and thereafter until and inclusive of the tenth day of September, 1871, one Catherine M. A. Buckley was, and from thence hitherto has been, and now is, the owner in fee, entitled to the possession, and actually seized and possessed of; and that, for eighteen years prior to said last-mentioned date, the said Catherine M. A. Buckley, and her ancestors and grantors, have been the owners in fee, holding adversely to the plaintiff and all others, and entitled to the possession, and actually seized and possessed of that portion of the land and premises described in plaintiff's complaint, which is described as follows:

That portion of the tract of land lying and situate in the county of Marin, State of California, and known as a portion of the rancho de San Ramon, or Soulajulle rancho, and described as follows, to wit:

36 For the point of commencement, start from a post at the junction of Frink's Cañon with the arroyo de Sausal; thence running south 28° west, 70 chains, to a post marked "S. & N.," on the southerly boundary-line of the rancho Soulajule, as surveyed by R. C. Matthewson; thence with and along said southerly boundary-line, running south 50° 30′ east, 127 chains and 40 links, to a point which is the point of commencement of this description.

From said point of commencement, running thence south 65° east, 10 chains; thence north 18° 30′ east, 235 chains, more or less, to the line of fence built by one William Brown, on the Soulajule rancho, being the southerly boundary-line of the tract of land conveyed to said William Brown by John P. Buckley, deceased, by deed dated twenty-first of June, 1861, and recorded in the county recorder's office of Marin County, in liber D of deeds, at page 349; thence south 79° 30′ west, 55 chains and 90 links, to a division fence built by George Rodgers and Jeremiah Carey, bearing thence south 18° 30′ west; thence running south 18° 30′ west, and along said division fence, 157 chains, more or less, to the said southerly line of the rancho Soulajulle; thence south 50° 30′ east, along said southerly boundary-line, 45 chains, more or less, to the point of commencement, containing about (882) eight hundred and eighty-two acres of land.

That the defendant, Jeremiah Carey, answering herein, occupies said land last above described as tenant of, and in subordination to, the legal title of the said Catherine M. A. Buckley to said land and premises,
37 and has no other right or claim thereto.

IV. And, for a further and separate answer to plaintiff's said complaint, the defendants aver that, on the said first day of September, 1871, and thereafter, until and inclusive of the tenth day of September, 1871, Edmund J. Buckley, John P. Buckley, and Vincent P. Buckley, minors and infant heirs of John P. Buckley, deceased, were, and from thence hitherto have been and now are, the owners in fee, entitled to the possession, and actually seized and possessed of; and that, for eighteen years prior to said last-mentioned date, said infant heirs, and their ancestors, predecessors, and grantors, have been the owners in fee, holding adversely to the plaintiff and all others, and entitled to the possession, and actually seized and possessed of that portion of the land and premises described in plaintiff's complaint, which is described as follows:

That portion of the tract of land lying and situate in the county of Marin and State of California, and known as a portion of the rancho de Ramon, or Soulajule rancho, and described as follows, to wit: Commencing at a post or stake at the junction of the arroyo de Sausal, or San Ramon, and the creek running from Frost's Cañon, so called; and from thence running in a southeasterly direction, following the meanderings of the arroyo de Sausal, south 59° 30′ east, 1 chain; thence south 8° west, 3 chains; thence south 6 chains; thence south 21° 30′
west, 2 chains; thence south 5° 30′ east, 4 chains and 50 links;
38 thence south 17° west, 8 chains; thence south 11° east, 7 chains;
thence south 32° 30′ east, 12 chains and 50 links; thence south 52° east, 6 chains and 50 links, to a post at the junction of Frink's Cañon with the aforesaid arroyo de Sausal; thence running south 28° west, 70 chains, to post marked "S. & N.," on the southern boundary-line of the rancho Soulajulle, as surveyed by R. C. Matthewson; thence with and along said southerly boundary-line, running south 50° 30′ east, 82 chains and 40 links, more or less, to the division fence built by George Rodgers and Jeremiah Carey; thence running north 18° 30′ east, and along the line of said fence, 157 chains, more or less, to the line of fence built by William Brown on the Soulajulle rancho, being the southerly boundary-line of the land conveyed to William Brown by John P. Buckley, by deed dated the twenty-first day of June, 1861, and recorded in the recorder's office of Marin County, in liber D of deeds, at page 349; thence running south 79° 30′ west, 47 chains and 10 links, more or less, and along the last-named boundary-line; thence north 74° 30′ west, 47 chains and 81 links; thence north 33° 45′ east, 10 chains and 15 links, to the place of commencement, containing about eight hundred and eighty-two acres.

That the defendant George Rodgers, answering herein, occupies said land last above described, as tenant of, and in subordination to, the legal title of the said minor heirs to said land and premises, and has no other right or claim thereto.

V. These defendants each disclaim all interest in any portion
39 of the land described in plaintiff's complaint, except the portion
hereinabove described as occupied by each respectively.

VI. And, for a further, separate, and distinct defense and answer, these defendants aver that plaintiff ought not to have or maintain his said action, because they, and each of them, say and aver that neither said plaintiff, nor his ancestors, nor his predecessors, nor his grantors, nor any of his predecessors, nor any of his grantors, has or have been seized or possessed, or entitled to the seizin or possession, of the premises respectively above described, being a portion of the premises described in the complaint, or any part thereof, within five years next before the filing of the complaint herein, or within fifteen years next before the commencement of this action, or the filing of the complaint herein. And these defendants, and each of them, set up and rely upon the statute in such cases made and provided, in bar to said action.

VII. And, for a further, separate, and distinct answer and defense, these defendants, and each of them, aver that this action was commenced heretofore, to wit, on the thirteenth day of February, 1872, and more than five years after that certain statute entitled, "An act to amend an act entitled 'An act defining the time for commencing civil actions,' passed April twenty-second, eighteen hundred and fifty," approved April 18, 1863, took effect. And said defendants, and each of them, set up and rely upon said statute in bar of this action.

40 VIII. And, for a further, separate, and distinct defense and answer, these defendants, and each of them, aver that the plaintiff ought not to have and maintain this action, because they aver that, more than fifteen years next before the commencement of this action, these defendants, respectively, and those under whom they claim, (excluding the plaintiff and his grantors, and each and every of them,) entered into and upon the possession and occupation of said premises, in the answer, respectively, above described as occupied by the answering defendants herein, and every part thereof, under claim of title, exclusive of every other right, founding such claim upon written instruments, as being conveyances purporting to convey said premises, respectively, to these defendants, and their ancestors, predecessors, and grantors, as shown in this answer. And these defendants, and those under whom they claim, (excluding the plaintiff, and his ancestors, predecessors, and grantors, and each and every of them,) have been in the actual, lawful, peaceable, quiet, open, notorious, visible, distinct, exclusive, and continued occupation and possession of the said premises, respectively, described in this answer as occupied by them, and every part thereof, as the owners thereof under such claim, claiming to own the same in their own right, exclusive of any other right, for five years next before the commencement of this action, and for fifteen years next before the commencement of this action, and for five years subsequent to the passage of said statute hereinbefore described as approved April 18, 1863, and for five years subsequent to the time when the last-
41 mentioned statute took effect, and holding and occupying the same adversely to the plaintiff, and his ancestors, predecessors, and grantors, and each and every of them, and to all other persons whomsoever, and to all the world.

IX. And, for a further, separate, and distinct defense and answer, these defendants say and aver that the title to the premises, respectively, hereinabove described as occupied by them, is outstanding in some person or persons other than said plaintiff, whose name or names are unknown to the defendants.

Wherefore these defendants pray to be dismissed, with their costs in this behalf incurred.

GRAY & HAVEN,
Attorneys for the Defendants above answering,
420 *California Street, San Francisco, California.*

[Duly verified.]

Plaintiff's statement on appeal.—Title of court and cause.

The above-entitled cause being called for trial, both parties waived a jury, and the case was tried by the court.

And thereupon the plaintiff offered and gave in evidence, without any objection being made thereto by the defendants, the following papers, to show title in himself to the land sued for and described in his complaint:

42 First. A certified copy of the espediente and grant, the latter bearing date the twenty-ninth March, 1844, in Spanish, with translations thereof, read in the words and figures following:

1844.—*Proceedings instituted at the instance of the citizen, José Ramon Mesa, who asks for the place known by the name of Soulajulle.*

Fourth seal, two reales.] [365.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

[L. S.] MICHELTORENA. [*Paraph.*]
PABLO DE LA GUERRA. [*Paraph.*]

THE MOST EXCELLENT THE GOVERNOR:

The citizen José Ramon Mesa, a native of this department, and resident within the jurisdiction of Sonoma, before your excellency, respectfully and in due form of law, do represent: That, in the year last past, I addressed to your excellency a petition praying for a place known by the name of Soulajulle, contiguous to the ex-mission of San Rafael; and, as it has doubtlessly been mislaid, I am under the necessity of
43 applying again to the generosity of your excellency that, in view of the report, which I duly accompany, of the person in charge of the said establishment, you may do me the favor of granting me the aforesaid land, bounded on the south and on the west by the place named Nicasio, on the north by the laguna de San Antonio, and on the east by the rancho of Juan Martin, the extent of which is three sitios de ganada mayor, (square leagues,) as explained by the map, which I also enclose to your excellency; which place I have been occupying about half a year, with a small house, a corral, an orchard, and with stock, with the consent of the aforesaid person in charge; for which reason, and in consideration of eleven years which I served in the military, and of my present services, which I render as mayordomo of said ex-mission, I hope that your excellency will consider my petition.

Wherefore I humbly pray your excellency to be pleased to grant me the favor, in which I shall receive grace and justice.

Monterey, March 21st, 1844.

I do not know how to write. ✗

MONTEREY, *March 21st*, 1844.

Let the secretary of state report hereon, making beforehand such inquiries as he may need.

MICHELTORENA.

SEÑOR GOVERNOR:

The only report which could be asked was that of the person
44 in charge of San Rafael, who already gives his opinion, as is shown by the certificate which the interested party annexes; and it being favorable, and the land is vacant, there can be inserted in the present espediente a provisional decree of concession, until the office of the secretary dispatches the business which your excellency wishes to forward to Mexico by the schooner California. However, your excellency's superior disposition of the matter will be the most proper.

Monterey, twenty-second March, 1844.

MAN'L JIMENO.

Approved:

MICHELTORENA.

MONTEREY, *March 27th*, 1844.

TO HIS EXCELLENCY THE GOVERNOR:

The interested party is very anxious to obtain the title, saying that he lives too far to return to conclude the business; and, if your excellency pleases, there can be granted to him the title to the land he asks, which is vacant, does not belong to any one, and the reports thereon are favorable.

Monterey, twenty-ninth March, 1844.

MAN'L JIMENO.

Approved:

MICHELTORENA.

MONTEREY, *twenty-ninth March*, 1844.

In view of the petition with which this record begins, the preceding reports, with everything else that was considered in conformity with the laws and regulations in the matter, I declare the citizen, Ramon
45 Mesa, owner in fee of the place named Soulajulle, bounded by the laguna de San Antonio, by the land of Nicasios, and by the rancho of Don Juan Martin to the extent of three sitios de ganada mayor, (square leagues.) Let the corresponding title be issued; let it be registered in the proper book, and forward this record to the most excellent the departmental assembly, for the approval thereof. The most excellent the governor, general of brigade of the Mexican army, adjutant-general of the staff of the same. Thus ordered, decreed, and signed, which I attest.

The undersigned, agent of the establishment of San Rafael, do certify:

That the land named Soulajuye is at considerable distance from this establishment; that it was vacant, and I gave permission to Ramon Mesa, mayordomo of the same, to proceed to establish himself there, for the reason that it did not belong to the property of any person nor corporation; and he did so about six months since, putting thereon a small house, corral, garden, and stock, and that this establishment possesses sufficient lands for its stock and work, and is not in want of the said land.

San Rafael, March 10th, 1844.

TIMATEO MURPHY.

[Third seal, one dollar.]

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one
46 thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

[L. S.] MICHELTORENA. [*Paraph.*]
PABLO DE LA GUERRA. [*Paraph.*]

The Citizen MANUEL MICHELTORENA,

General of brigade of the Mexican army, adjutant-general of the staff of the same, governor, commandant-general, and inspector of the department of the Californias:

Whereas the citizen Ramon Mesa has petitioned, for his personal benefit and that of his family, for the place known by the name of Soulejulle, bounded by the laguna de San Antonio, by the tract of land named Nicasio, and by rancho of Don Juan Martin—the proceedings having previously been taken and the investigations made in accordance with the laws and regulations in the matter—in the exercise of the powers conferred upon me, in the name of the Mexican nation, I have thought proper to grant to him the aforesaid land, declaring it to be his property by these present letters, subject to the approval of the most excellent the departmental assembly, and under the following conditions:

1st. He cannot sell, alienate, nor mortgage it, nor subject it to rent, entail, security, mortgage, nor other incumbrance whatsoever.

2d. He may fence it without prejudice to the ways, roads, and 47 servitudes; he shall enjoy it freely and exclusively, putting it to such use or cultivation as may suit him best; but within one year he shall build a house, and it shall be inhabited.

3d. He will request the proper magistrate to give him the judicial possession thereof, in virtue of this title, by which the boundaries will be marked, at the limits of which he shall set, besides the land-marks, some fruit or forest trees of some utility.

4th. The land of which donation is made is of three square leagues, (sitios de ganada mayor,) little more or less, as is explained by the respective map. The magistrate who may give the possession will cause it to be measured in accordance with the ordinance, leaving the excess (sobrante) that may result to the nation for the purposes that may be convenient.

5th. If he contravene these conditions he shall forfeit his right to the land, and it shall be open to denouncement by another.

In consequence, I order that the present shall serve as a title in his favor, and holding the same as firm and valid. Let it be registered in the corresponding book, and be delivered to the interested party for his security, and other purposes.

Given in Monterey, on the twenty-ninth of the month of March, one thousand eight hundred and forty-four.

MAN'L MICHELTORENA. [*Paraph.*]

MAN'L JIMENO, *Sec'y.* [*Paraph.*]

48 This title is registered in the respective book, on leaf 8.

JIMENO. [*Paraph.*]

Secondly. Plaintiff gave in evidence a deed from Ramon Mesa, the grantee thereof, and signed "Ramon [his X mark] Mesa to Walter Skidmore," bearing date the sixth August, 1855, which was duly acknowledged by the said Mesa, and was recorded in the county of Marin, on the sixteenth day of June, 1856, wherein it is recited that, in consideration of fifty dollars then paid by the said Skidmore, and for other good and valuable considerations, the said Mesa sold, granted, quit-claimed, and conveyed to the said Walter Skidmore, his heirs and assigns, the following described tract of land, situate in Marin County, known by the name of Soulajulle, bounded by the laguna San Antonio, by the land named Nicasio, and by the rancho of John Martin, and being the same land which was granted to the said party of the first part by Manuel Micheltorena, governor and commandant-general and inspector of California, by a grant dated at Monterey, the twenty-ninth day of March, 1844, which tract of land contains three Mexican square leagues, and the boundary will more fully appear by the map or design which is attached to the petition for said land, a copy of which is attached to this deed, and the original is now on file in the office of the surveyor-general of the United States for California.

49 Thirdly. The plaintiff gave in evidence a deed from the said Walter Skidmore to Walter A. Skidmore for the same land, giving the same name and description and dates and references as are con-

tained in the deed from Mesa to him, reciting the consideration of one dollar, whereby he grants, bargains, sells, releases, remises, and conveys the land in it described to the said Walter A. Skidmore, which deed is dated twelfth of December, 1859, was duly acknowledged on that day, and was recorded in the county of Marin, on December 13th, 1859.

Fourthly. The plaintiff then gave in evidence a deed from the said Walter A. Skidmore to one Hiram C. Lillie, bearing date the third of October, 1860, which recites a consideration of one dollar paid by Lillie, by which the said Walter A. Skidmore grants, bargains, sells, releases, and conveys unto the said Lillie that certain tract or parcel of land situate in the county of Marin, described as follows, viz: The rancho known by the name of Soulajulle, bounded by the laguna de San Antonio, by the land named Nicasio, and by the rancho of Juan Martin, and being the same land which was granted to José Ramon Mesa by Manuel Micheltorena, governor of California, by a grant dated at Monterey, the twenty-ninth of March, 1844, which said tract of land contains three square leagues of land, and the boundaries thereof will more fully appear by reference to the map or plat which is hereto attached; the interest herein conveyed being the same interest heretofore conveyed to Walter Skidmore by said Ramon Mesa, by deed dated the sixth
50 of August, 1855, which is recorded in book C of deeds, page 66, of the records of Marin County, on the sixteenth of June, 1856. Which deed from W. A. Skidmore to H. C. Lillie was duly acknowledged, and was recorded in Marin County, fourth of October, 1860.

Fifthly. The plaintiff then gave in evidence a deed bearing date sixteenth of February, 1871, from Lewis Lillie, the said Hiram C. Lillie, and Byron Lillie, by his attorney in fact, Hiram C. Lillie, to one Daniel Brown, the plaintiff in this action; which deed is in words and figures following:

This indenture, made and executed this sixteenth day of February, eighteen hundred and seventy-one, between Lewis Lillie, Hiram C. Lillie, and Byron Lillie—the latter by his attorney in fact, Hiram C. Lillie—parties of the first part, all of the State of Nevada, and Daniel Brown, of the State of Illinois, party of the second part, witnesseth:

That, for and in consideration of the sum of ten thousand (10,000) dollars, in hand paid, the receipt whereof is hereby acknowledged, the said parties of the first part hereby grant, bargain, sell, and convey to the said party of the second part, and his heirs and assigns, all their several or joint interests, right, and titles to the ranch known by the name of Soulajulle, lying and being in the county of Marin, State of California, and which was granted by the Mexican government, on or about the twenty-ninth day of March, eighteen hun-
51 dred forty-four, by the said name of Soulajulle, to one Ramon Mesa, and which grant has been since held, by the courts of the United States, in accordance with the treaty of Guadalupe-Hidalgo, and under the laws of Congress made to carry out its provisions, to be a valid grant, and such thereby fully confirmed and made valid, together with all its appurtenances thereto belonging:

To have and to hold the said premises unto the party of the second part, and his heirs and assigns forever, free from the claims of the parties of the first part and their heirs.

Witness our hands and seals, the day and year first above written.

LEWIS LILLIE. [SEAL.]
HIRAM C. LILLIE. [SEAL.]
BYRON LILLIE. [SEAL.]
By HIRAM C. LILLIE,
Attorney in Fact.

STATE OF NEVADA, *County of Storey, ss :*

On the eighteenth day of February, A. D. one thousand eight hundred and seventy-one, before me, Richard L. Thomas, commissioner of deeds for the State of California, in the State of Nevada, and residing in the city of Virginia, personally appeared Hiram C. Lillie, personally known to me to be the person described in, and who executed the annexed instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

52 Witness my hand and official seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.] RICHARD L. THOMAS,
Commissioner of Deeds for California
in the State of Nevada..

STATE OF NEVADA, *County of Storey:*

On this eighteenth day of February, A. D. one thousand eight hundred and seventy-one, before me, Richard L. Thomas, commissioner of deeds for the State of California in the State of Nevada, and residing in the city of Virginia, personally appeared Hiram C. Lillie, personally known to me to be the same person who executed, by power of attorney, the foregoing instrument, as the attorney in fact of Byron Lillie, said Byron Lillie being named in the annexed instrument as a party thereto, and therein described as the party executing the same; and the said Hiram C. Lillie acknowledged to me that he executed the same freely and voluntarily, as and for the act and deed of the said Byron Lillie, and for the uses and purposes therein mentioned.

Witness my hand and official seal, the date first above in this certificate written.

[NOTARIAL SEAL.] RICHARD L. THOMAS,
Commissioner of Deeds for California
in the State of Nevada.

53 STATE OF CALIFORNIA,
City and County of San Francisco, ss :

On this eighth (8th) day of March, A. D. one thousand eight hundred and seventy-one, before me, J. H. Blood, a notary public in and for said city and county, duly commissioned and sworn, personally appeared the within-named Lewis Lillie, personally known to me to be the individual described in, and who executed the annexed instrument; and he, the said Lewis Lillie, duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.] J. H. BLOOD,
Notary Public.

(Endorsed :) Recorded in the office of the county recorder of Marin County, March 13, A. D. 1871, at one o'clock and thirty minutes p. m., in liber I of deeds, pages 413 and 414, at the request of Daniel Brown.

JOHN REYNOLDS, *Recorder.*
V. D. DOUB, *Deputy.*

(Endorsed:) Recorded Marin County recorder's office, March 13, A. D. 1871, at 1.30 o'clock, p. m. in liber 1 of deeds, pages 413 and 414.

JOHN REYNOLDS, *Recorder*.
By V. D. DOUB, *Deputy*.

Which deed was duly acknowledged, and was recorded in Marin County, the thirteenth day of March, 1871.

54 Sixthly. The plaintiff then gave in evidence a copy of the petition filed by one Pedro J. Vasques, presented to and filed with the board of commissioners appointed to ascertain and settle the private land-claims for the State of California, under the provisions of the act of Congress of the third of March, 1851, entitled "An act to ascertain and settle the private land-claims of the State of California," which petition reads in the words and figures following:

To the board of commissioners for ascertaining and settling private land-claims in the State of California:

Your petitioner, Pedro J. Vasques, of the city of Sonoma, in the county of Sonoma, in the State of California, respectfully represents to your honorable board that he claims a certain tract of land called a part of the rancho of Ramon Mesa, or "Sulajulle," containing twelve square miles, more or less, situated in the county of Marin, in said State of California.

That he claims the same in fee, by virtue of a grant made to José Ramon Mesa, alias Ramon Mesa, under the authority of the Mexican government of the department of the Californias, bearing date the twenty-ninth day of March, A. D. 1844, and approved by the territorial deputation the

Your petitioner further represents that the said grantee, on the twenty-eighth day of March, A. D. 1850, transferred all his right in said twelve square miles of land to your petitioner, Pedro J. Vasques, who thereby became the owner in fee of the same.

55 Your petitioner further represents that the grant to Ramon Mesa was of three square leagues, as will fully appear by the original grant and espediente, filed in the office of your secretary, in Case No. 233, being the claim of Joshua S. Brackett to a portion of the same rancho of "Sulajulle," to which originals (copies of which are filed herewith) reference may be had.

Your petitioner files herewith the conveyance of said José Ramon Mesa to him; as, also, translations of the original espediente and grant.

Your petitioner would further represent that judicial possession of said tract of land called "Sulajulle" was given to the said grantee, José Ramon Mesa, on the   day of   , and the boundaries thereof designated and defined, and that he, and those claiming under him, have been in the peaceable possession thereof ever since, and that he has no knowledge of any interfering claim.

All of which your petitioner is ready to prove, together with any and all such further proof of title as may be required by your honorable board.

Your petitioner prays your honorable board to take into consideration his claim to said land, and decree his title to be valid, and confirm the same.

And your petitioner will ever pray.

Sonoma, May 25th, 1852.

PEDRO J. VASQUES.
By ROBERT HOPKINS.

Seventhly. The plaintiff then gave in evidence the final decree of confirmation by the district court of the United States to the said
56 Vasques, under the petition, an act of Congress aforesaid, which reads as follows:

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 3d day of March, A. D. 1856. Present, the Hon. Ogden Hoffman, district judge.

THE UNITED STATES
ads. } D. C. 331. L. C. 245.
PEDRO J. VASQUES.

This cause came on to be heard on appeal from the final decision of the board of commissioners, to ascertain and settle the private land-claims in the State of California, under the act of Congress approved third March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision was founded, and it appearing to the court that the said transcript has been duly filed according to law, and the cause having regularly come to a hearing, it is, by the court, hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby, reversed; and it is likewise ordered, adjudged, and decreed, that the claim of the appellant is a good and valid claim, and that the same be, and is hereby, confirmed.

The land of which confirmation is hereby made is a portion of a tract called "Soulajulle," in Marin County, (granted to José Ramon Mesa, March 29th, 1844,) and is bounded and described as follows:
57 Bounded on the east by the land owned by Wm. M. Fuller, and running northward and southwardly the entire distance of Wm. M. Fuller's west line, and running out therefrom four miles long and two miles wide; bounded on the north by the laguna de San Antonio, and south by the tract of land called Nicasio; reference, for a more particular description, to be had to the grant, map, and transfer filed in the case.

Provided, that the land above described be found within the exterior boundaries of the said original grant, made to José Ramon Mesa by Governor Manuel Micheltorena, on the twenty-ninth day of March, 1844; but, if the whole of the above-described land be not found within the exterior boundaries of said original grant, then only such quantity thereof as may be found therein is herein confirmed.

OGDEN HOFFMAN,
United States District Judge.

Filed March 3d, 1856.

W. H. CHEVERS, *Deputy.*

Also, gave in evidence therewith, the stipulation in the same case, in words and figures following:

We agree that the evidence taken in Case No. 233, relating to the rancho granted to Ramon Mesa, shall be used by either party, and be equally applicable to Nos. 234, 245, 246, 247, and 797, involving the same grant.

December 31st, 1853.

SHATTUCK, SPEAR & BRISTOL,
For Claimants.
ROBERT GREENLAW,
Assistant Law-Agent, U. S.

58 Eighthly. The plaintiff then gave in evidence a deed from the said P. J. Vasques, bearing date the 23d of November, 1858, to the aforesaid Lewis Lillie, whereby, for the sum of two thousand dollars, the said Vasques released, remised, and quit-claimed to the said Lewis Lillie all his right and title in a certain rancho situate in the county of Marin, formerly known as the rancho Soulajulle, as granted to Ramon Mesa, 1844, bounded north by the laguna de San Antonio, east by the land of Juan Martin, south and west by the lands known as the Nicasio, to contain three square leagues of land, more or less; which was duly acknowledged and recorded in Marin County, the twenty-first day of June, 1859.

This was all the evidence given by the said plaintiff, and he rested there.

Thereupon, the defendants moved the court to enter a judgment of non-suit in the cause, on the grounds—

First. The plaintiff has failed to show title in himself in the lands described in plaintiff's complaint, or in any part thereof.

Second. The plaintiff has failed to show prior possession in himself, or his ancestors, predecessors, or grantors, or either of them.

Third. It appearing from the evidence that P. J. Vasques did present to the United States land-commission (hereafter named) a peti-
59 tion for confirmation of his claim to the Soulajulle grant, the evi-
dence does not prove, or tend to prove, that either or any of the defendants are in possession of that portion of said grant which is claimed by Pedro J. Vasques in his said petition.

Fourth. That no ouster had been proven.

Fifth. The evidence does not prove that the claim of the plaintiff, or of those under whom he derives title for any portion of the claim sued for in plaintiff's complaint, (except the Vasques claim,) has been presented to the board of United States land-commissioners, appointed under the act of Congress approved March 3d, 1851, for the settlement of private land-claims in the State of California, either by the plaintiff, or by any person under or through whom the plaintiff claims.

Which motion, after argument by the attorneys for the respective parties, was granted by the court; to which ruling of the court the plaintiff then and there duly excepted, and asked that said exception might be entered and made of record. Which was so ordered.

Judgment for nonsuit.

DANIEL BROWN, PLAINTIFF, ⎫
vs. ⎬ In open court, August 15, 1872.
J. S. BRACKETT, DEFENDANT. ⎭

This cause coming on to be heard upon the motion of defendants
60 for a nonsuit, and the said motion having been argued by the re-
spective counsel and submitted for decision, and the court having considered the same, and being now fully advised—

It is ordered and adjudged that the said motion of defendants for nonsuit be, and the same is hereby, sustained.

And it is further ordered and adjudged that the defendants do recover and have judgment against the plaintiff for their costs herein, taxed at $385.30.

Errors assigned by plaintiff.—Title of court and cause.

The plaintiff assigns as errors in the foregoing record and as grounds of appeal in the above-entitled cause—

1st. That the court erred in sustaining the motion of the defendants for a non-suit.

2d. That the court erred in giving judgment for the defendants and against the said plaintiff.

JOHN WILSON,
Attorney for the Plaintiff.

61 *Stipulation on appeal.*

In the district court of the seventh judicial district of the State of California, in and for the county of Marin.

DANIEL BROWN
vs.
JOSHUA S. BRACKETT ET ALS.

It is stipulated that the foregoing twenty-eight pages, from one to twenty-eight, is a true and correct engrossed statement on appeal herein, and that the same was served in due time.

17th September, 1872.

GRAY & HAVEN,
Attorneys for Defendants.
F. D. COLTON,
Attorney for Defendants,
By GILES H. GRAY.

Notice of appeal.—Bond for appeal duly filed.

STATE OF CALIFORNIA,
County of Marin, Seventh District Court, ss:

DANIEL BROWN
vs. } Seventh dist., Marin.
JOSHUA S. BRACKETT ET ALS.

You will please take notice that the plaintiff in the above-entitled action hereby appeals to the supreme court of this State from the judgment therein made, on the fifteenth day of August, 1872, in favor of the said defendants and against the said plaintiff, and from the whole thereof. 62

Dated this thirteenth day of September, 1872.

JOHN WILSON,
Attorney for the Plaintiff.

To V. D. DOUB,
Clerk of the Seventh District Court, Marin County.

To F. D. COLTON and A. THOMAS.
To GRAY & HAVEN,
Att'ys for Def'ts.

Received a copy of the within notice, this thirteenth day of September, 1872, waiving all objections as to form and time of service.

GRAY & HAVEN,
Attorneys for Defendants.
F. D. COLTON,
Attorney for Defendants,
By GILES H. GRAY.

63 *Stipulation.—Title of court and cause.*

It is hereby stipulated that the foregoing sixty-two printed pages contain a full, true, and correct transcript on appeal in the above-entitled cause, and the same is correctly printed.

A proper undertaking has been filed, and the insertion thereof in this transcript is hereby waived.

F. D. COLTON,
By GILES H. GRAY.
GRAY & HAVEN,
Attorneys for Respondent.
JOHN WILSON,
Attorney for Appellant.

64 In the supreme court of the State of California.

DANIEL BROWN, APPELLANT,
vs.
JOSHUA S. BRACKETT, RESPONDENT.
} October term, 1872.

By the court. (No. 3516, Brown vs. Brackett et als. Filed December 13th, 1872.) The confirmation upon which the plaintiff relies was of a portion of the Soulajulle rancho, described in the decree as "bounded on the east by the land owned by W'm M. Fuller, and running northward and southwardly the entire distance of W'm M. Fuller's west line, and running out therefrom four miles long and two miles wide, bounded on the north by the laguna de San Antonio, and south by the tract of land called Nicasio.

The description of the land sued for, as contained in the complaint, is set out by calls and distances. There is no apparent identity between the tract confirmed and the tract sued for, and no attempt was 65 made at the trial to show that the land as described in the complaint was included in the decree of confirmation. Even assuming, therefore, that, by their answers, the defendants admitted themselves in possession of portions of the general tract described in the complaint, the judgment of nonsuit rendered on the ground that no ouster had been proven, was correct; for, taking the admissions upon that point in connection with the complaint and all the evidence offered, it did not in anywise appear that the land in possession of the defendants was a part of the land confirmed to Vasques, under whom the plaintiff claimed title. It is indispensable to a recovery in ejectment that it should in some way appear that the defendants were, at the commencement of the suit, in possession of some part of the tract to which the plaintiff establishes his title.

It was claimed in argument that the confirmation to Vasques, though in terms for but a portion of the large tract called Soulajulle, was, 66 in effect, an adjudication that the grant to Mesa was a valid grant to the entire tract, including that portion outside as well as that within the tract confirmed to Vasques, and had the effect to confirm to Mesa, and his grantees, the entire tract, notwithstanding no claim for the confirmation thereof was ever presented to the land-commission. But this view is wholly inadmissible, and, if maintained, would contravene the practice uniformly pursued under the act of March, 1851, and would necessarily re-open most of the questions concerning the boundaries of Mexican grants, which it has been the effort of the Government for the last twenty years to settle and definitely determine.

Judgment affirmed.

I, Grant I. Taggart, clerk of the supreme court of the State of

California, do hereby certify that the preceding and annexed contains a true and correct copy of the original opinion delivered in the above-entitled cause on the 13th day of December, A. D. 1872, and now on file in my office.

67 Witness my hand and the seal of the court, this 8th day of January, A. D. 1873.

[L. S.] GRANT I. TAGGART, *Clerk*,
By ALLEN TILLINGHAST, *D. C.*

68 In the supreme court of the State of California, October term, A. D. 1872.

DANIEL BROWN, APPELLANT, *vs.* JOSHUA S. BRACKETT, RESPONDENT,	On appeal from the district court of the 7th judicial district in and for the county of Marin.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by the court to the effect that the judgment of the court below be affirmed.

Whereupon it is now considered, ordered, adjudged, and decreed by the court here, that the judgment of the district court of the 7th judicial district, in and for the county of Marin, in the above-entitled cause, be, and the same is hereby, affirmed with costs.

69 I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 13th day of December, A. D. 1872, and now remaining of record in my office.

Witness my hand and the seal of the court affixed, at my office, this 8th day of January, A. D. 1873.

[L. S.] GRANT I. TAGGART, *Clerk*,
By ALLEN TILLINGHAST, *D. C.*

(Endorsed:) Filed Jan. 9, 1873. V. D. Daub, clerk.

70 UNITED STATES OF AMERICA, *ss:*

To Joshua S. Brackett, Charles H. Thatford, Martino Christofanini, Felippino Paolo, Moretti Michele, Theron H. Ink, J. S. Watson, D. Fuller, A. Dado, Peter Tonini, J. M. Fiori, Antonio Fiori, David Muscio, Natale Giacomini, Louis Canapa, A. F. Bradley, Jethro Dodson, James N. Noble, H. A. Heinecker, Joseph Dodson, Louis Pedrozzini, Pietro Tomasini, Frank Tognazzi, Jeremiah Carey, George Rodgers, Job Batchelder, J. G. Mayer, —— Palmer, Antonio Canapa, Angello Canapa, Lorenzo Martinelli, J. H. Ink, William Brown, Jeremiah King, —— Deunidie, Theron Ink, and S. N. Ink, defendants in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be held at the city of Washington, in the District of Columbia, on the first Monday of December, A. D. 1873, pursuant to a writ of error filed in the clerk's office of the district court of the seventh judicial district of the State of Calfornia, in and for the county of Marin, wherein Daniel Brown is plaintiff in
71 error, and you are defendants in error, to show cause, if any

there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this eighteenth day of January, A. D. 1873, and of the Independence of the United States the ninety-seventh.

W'M T. WALLACE,
Chief Justice of the Supreme Court of the State of California.

(Endorsed:)

We accept and acknowledge due service of the within citation, this 20th day of Jan'y, 1873.

GRAY & HAVEN,
Attorneys for Def'ts.

Filed Jan'y 21st, A. D. 1873.

VAL. D. DOUB,
Clerk 7th Dist. C't Marin Co.

72 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you, between Daniel Brown, plaintiff in error, and Joshua S. Brackett, Charles H. Thatford, Martino Cristofanini, Felippini Paolo, Morette Michele, Theron H. Ink, J. S. Watson, D. Fuller, A. Dado, Peter Tonini, J. M. Fiori Antonio Fiori, David Muscio, Natale Giacomini, Louis Canapa, A. F. Bradley, Jethro Dodson, James N. Noble, H. H. Heinecken, Joseph Dodson, Louis Pedrozzini, Pietro Tomasini, Frank Tognazzi, Jeremiah Carey, George Rodgers, Job Batchelder, J. G. Mayer, Palmer, Antonio Canapa, Angello Canapa, Lorenzo Martinelli, J. H. Ink, William Brown, Jeremiah King, Deunidie, and S. N. Ink, defendants in error, a manifest error hath happened, to the great damage of
73 the said plaintiff in error, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the first Monday of December next, in the said Supreme Court of the United States of America, to be then and there held, that, the record and proceedings aforesaid be inspected, the said Supreme Court of the United States of America may cause further to be done, therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Su-
74 preme Court of the United States, this first Monday of December, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[L. S.] L. S. B. SAWYER,
Clerk of the United States Circuit Court for the district of California.
By J. F. O'BEIRNE,
Dep. Cl'k.

(Endorsed:)
Copy of writ of error lodged in the clerk's office of the seventh judicial district court of the State of California, in and for the county of Marini, for the within-named def'ts in error, pursuant to the act of Congress in such case made and provided.

JOHN WILSON,
Att'y for Pl'ff in Error.

JAN'Y 16, 1873.

Filed Jan'y 16, 1873.

V. D. DOUB,
Clerk Dis't C't 7th Judicial District, Marin Co.

75 In the Supreme Court of the United States of America.

DANIEL BROWN, PLAINTIFF IN ERROR, *v.* JOSHUA S. BRACKETT ET AL., DEFENDANTS IN error.	In error to U. S. Sup. Court.

Know all men by these presents that we, Daniel Brown, of Illinois, as principal, and Henry Zim and William Thurnaurer, as sureties, are held and firmly bound unto the defendants in this suit, to wit, Joshua S. Brackett, Charles S. Thatford, Martino Cristofanini, Felippini Paolo, Moretti Michele, Theron H. Ink, J. S. Watson, D. Fuller, A. Dado, Peter Tonini, J. M. Fiori, Antonio Fiori, David Muscio, Natale Giacomini, Louis Canapa, A. F. Bradley, Jethro Dodson, James N. Noble, H. H. Heinecken, Joseph Dodson, Louis Pedrozzini, Pietro Tomasini, Frank Tognazzi, Jeremiah Carey, George Rodgers, Job Batchelder, J. G. Mayer,
Palmer, Antonio Canapa, Angello Canapa, Lorenzo Martin-
76 ello, J. H. Ink, William Brown, Jeremiah King, Deunidie,
Theron Ink, and S. N. Ink, in the sum of one thousand dollars to be paid to the said defendants, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this sixteenth day of January, A. D. 1873.

Whereas the above-named Daniel Brown hath prosecuted a writ of error to the Supreme Court of the United States of America to reverse the judgment rendered in the above-entitled suit, by the supreme court of the State of California: Now, therefore, the condition of this obligation is such that if the above-named Daniel Brown shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

77 HENRY ZIM. [SEAL.]
WM. THURNAUER. [SEAL.]

Sealed and delivered in presence of—
F. O. WEGENER.

UNITED STATES OF AMERICA,
District and State of California:

Henry Zim and William Thurnauer, being severally duly sworn, each for himself, deposes and says that he is a householder and a freeholder in said State, and is worth the sum of one thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

Subscribed and sworn to before me this 16th day of January, A. D. 1873.

[L. S.] F. O. WEGENER,
Notary Public.

We are satisfied with the foregoing bond both as to the execution, amount, and sufficiency of sureties.

GRAY & HAVEN,
Att'ys for Def'ts.

78 The foregoing bond is hereby approved, both as to the execution, the amount, and the sufficiency of the sureties.

WM. T. WALLACE,
Chief Justice of the Supreme Court of the State of California.

(Endorsed:) Filed January 21st, A. D. 1873.

VAL. D. DOUB,
Clerk 7th Dist. C't, Marin Co.

79 STATE OF CALIFORNIA,
County of Marin, Clerk's Office, ss:

I, Valentine D. Doub, county clerk and ex-officio clerk of the 7th judicial district court in and for said Marin County, do hereby certify that the foregoing sixty-three printed pages constituting a transcript on appeal from the 7th judicial district court to the supreme court of the State of California, in the case of Daniel Brown vs. Joshua S. Brackett et als., and also the foregoing and annexed fifteen written pages, are full, true, and correct transcripts from the original records and papers on file in my said office.

Witness my hand and seal of the 7th district court, this 15th day of September, A. D. 1873.

[SEAL.] VAL. D. DOUB, *Clerk.*
By GEO. W. DAVIS, *Deputy Clerk.*

(Indorsement on cover:) No. 204. Daniel Brown, plaintiff in error, vs. Joshua S. Brackett et al. California sup. court. Filed 1st October, 1873.

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IN THE

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DANIEL BROWN,
Plaintiff in Error,

vs.

JOSHUA S. BRACKETT, et als.
Defendants in Error.

Argument for Plaintiff in Error.

C. T. BOTTS,
Counsel.

SAN FRANCISCO:
H. S. CROCKER & CO. PRINTERS.
1874.

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IN THE

SUPREME COURT

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UNITED STATES.

DANIEL BROWN,

Plaintiff in Error,

VS.

JOSHUA S. BRACKETT ET ALS.,

Defendants in Error.

ARGUMENT FOR PLAINTIFF IN ERROR.

The plaintiff in error complains that he has been injured by an erroneous construction of the Act of Congress of the 3d of March, 1851, entitled "An Act to ascertain and settle private land claims in the State of California."

He brought his action of ejectment, deraigning his title in his complaint, from one Ramon Mesa, who, he alleges, acquired title from the Mexican Government, which, he says, was finally and duly confirmed by the District Court of the United States for the Northern District of California. The answer of the defendants admits their possession and the grant to Mesa, but denies the confirmation. To sustain his allegation of presentation and confirmation, the plaintiff offered in evidence the record of the proceedings in the District Court, in which one Vasques sought and obtained a confirmation of a portion of the land granted to Mesa, on the ground of having, by mesne conveyance, derived title thereto from the grantee.

It does not appear that any other portion of the grant was ever presented, and it is claimed that the failure to present worked a forfeiture of the unpresented portion. It was on this ground that the nonsuit was granted. It is of this ruling the plaintiff complains. He contends that the Act of 1851 vested the Court with authority to determine only the validity of the Mexican grant; that it had nothing to do with the derivative title of Vasques, and that the judgment exhibited in the record, operates as a confirmation of the whole grant. He appeals to the authority of this Court to sustain this position. More than once you have declared that the "extraordinary tribunal created by the Act of 1851, was limited to the determination of the validity of the original grant, and that it had nothing to do with derivative claimants."

As early as 1854, the Hon. Commissioner Thompson, of the Land Commission, took this view of the powers and duties of the Board. In the case, No. 433, *Williams* vs. *The United States*, it appeared that Williams presented a grant from Governor Alvarado to one Antonio Maria Lugo, claiming to be the alienee of Lugo. The deed from Lugo to Williams recited the fact that Lugo had previously conveyed one-half of the property to Williams, and the other half to the children of Williams. A majority of the Board cut the grant in two, confirmed one-half to Williams, and rejected the other half. Judge Thompson dissented, and delivered an opinion, in which he very clearly showed that the Board must deal with the grant as an entirety, and that they had no authority, except to declare the original grant valid or invalid. From this opinion we make the following extracts:

"The duties of this Commission are, in my opinion, confined to a very narrow compass. They are, according to my view of the law by which it was created, limited to a decision upon any right or title derived from the Mexican or Spanish Governments, as between the claimant and the United States. Although, from the various character of the grants themselves, the different practice under different Governors, in the modes of proceeding and in the forms and conditions of the grants, together with the inequalities and confusion incident to long-continued periods of political turmoil and revolution, a wide and laborious field of investigation has been opened to us, I have been unable to discover anything which extends our jurisdiction beyond the limits already indicated, or which invests us with any power to decide upon conflicting claims derived from the same source, and descending through the same channels, the effect of which would be to divest the rights acquired under the original grant, and operate a forfeiture of the land. When a right or title to lands has passed from the government to an individual, it becomes *ipso facto* private property, and, as such, it is protected by the terms of the treaty of cession, and by the provisions of the law of nations. So far as the United States are concerned, it is a matter of entire indifference whether that right remains in the original grantee or has been transferred to other parties; her rights in the premises are neither to be increased or diminished by the mere fact of alienation by the original grantee."

He goes on to say:

"The United States could acquire no interest in the property while there was a valid subsisting private right in another; and the testimony establishes beyond all controversy the existence of such a right, either in the claimant or in him and his children jointly. Here, in my opinion, the action of the Board in the matter should have commenced by entering a decree of confirmation in favor of the claimant to the whole extent of the land claimed, leaving the conflicting rights, if any, between Williams and his children, to be settled in the mode prescribed in the thirteenth section of the Act of the third of March, 1851, by the local tribunals of the country to whose jurisdiction they properly belonged."

It is true that this is a dissenting opinion; but, as far as it relates to the powers springing from the Act of 1851, it is fully sustained by the decisions of the Supreme Court of the United States, in the cases of the *United States* vs. *Sutter*, 21 Howard, 170; *Castro* vs. *Hendricks*, 23 Howard, 23; *United States* vs. *Vallejo*, 1 Black, 283; and *United States* vs. *Morillo*, 1 Wallace, 709.

In Sutter's case, it was objected that the record showed that Sutter had parted with almost the whole of his interest; and it was urged that the confirmation should be to him for only that portion that he still represented. The Supreme Court held that it was enough that the grant was properly before them, and they acted upon it as an entirety, confirming it to the original grantee, and leaving the question of derivative titles to the ordinary tribunals of the country. This case is precisely analogous to the case of Williams, and here the Supreme Court refused to do what a majority of the Commission did do, and did precisely what Mr. Justice Thompson would have had done.

The next case is that of *Castro* vs. *Hendricks*, reported in 23 Howard.

This was an appeal from the Circuit Court of the United States for the District of Columbia, from an order refusing a mandamus to the Commissioner of the General Land Office, to prepare and deliver a patent. Different portions of the San Gregorio Rancho had been confirmed to different parties—one part to Castro. The Commissioner concluded that the survey of Castro's part included public land, and refused to prepare the patent. The Court say:

"The primary object of the Act 'to ascertain and settle private land claims in the State of California, approved third March, 1851, was to distinguish the vacant and public lands from those that were private property; and, for this purpose, an inquiry into pre-existing titles became necessary. To accomplish this, every person claiming lands in California, by virtue of any right or title derived from the Spanish or Mexican Government, was required to present the same to a Board of Commissioners. The mesne conveyances were also required, but not for any aim of submitting their operation and validity to the Board, but simply to enable the Board to determine if there was a *bona fide* claimant before it under a Mexican grant; and so this Court has repeatedly declared that the Government had no interest in the contests between persons claiming. *ex post facto*, the grant. (*United States* vs. *Sutter*, 21 Howard.) The authentic evidence of what is private property is to be found in the grants of the Government of California, and not in the mesne conveyances; nor is this Government charged to decide between claimants in the condition of those interested in the Rancho San Gregorio."

Now, let us apply this ruling to the case at bar. Vasques presents the grant of Ramon Mesa, and exhibits his derivative conveyance from Mesa. With the derivative title the Board had nothing to do, except to determine whether the original grant had been presented by a *bona fide* claimant under it. The question for that tribunal—the only question in which the United States has any interest, the only question with which the Federal Government is "charged"—is to determine whether the land described in the grant is public or private land. The grant must not only be presented, but presented by a *bona fide* claimant under it. Then, the question of public or private land having been presented, must either have been determined, or it remains still undetermined. It is clear that the deed of Mesa to Vasques could not authorize a special confirmation to Vasques, because the Supreme Court say it could serve no other purpose but to bring the original grant properly before the Commission.

The Act of 1851 provided for the confirmation of certain claims. That the claims to be confirmed or rejected were the original grants, and not the derivative titles, is manifest from an inspection of the Act. The Commissioners, in determining the validity of the claims referred to, are to be guided by the laws of nations, the Treaty of Guadalupe Hidalgo, and the usages of the governments of Spain and Mexico.

What bearing, we should like to know, have the laws of nations, or the Treaty of Guadalupe Hidalgo, on the question of the validity or effect of a conveyance from Tom Brown to John Jones?

In the case of *Vallejo* vs. *the United States*, Vallejo presented the question of the validity of the grant to one José Peña, claiming to have derived title from Peña. The conveyance from Peña to Vallejo bore date six months prior to the grant to Peña. The genuineness of the signature was also disputed. The District Judge, informed by the case of *Castro* vs. *Hendricks*, held that the United States had no interest in the question of the pretended conveyance from Peña to Vallejo; that the question of the validity of the grant was properly before the Court; that the grant to Peña was a good and valid grant, and, therefore, he confirmed the grant, Peña being dead, to Vallejo, with this proviso:

"Provided, that the confirmation of the above land to the said M. G. Vallejo shall be without prejudice to the rights of the legal representatives of Lazaro Peña, or whoever may be entitled to said lands under him; and said confirmation to said Vallejo is to enure to the benefit of any person or persons who may own or be entitled to said land by any title, either at law or in equity, derived from the original grant by deed, devise, descent, or otherwise."

From this decree the United States appealed. The case is reported in 1 Black. The Attorney-general objected that the conveyance of Peña to Vallejo, before the grant was made, was inoperative and void. Mr. Johnson, for the appellee, argued that it was clear the United States had no title, and, therefore, could not interfere between the original grantee and his alienee. The Court, in a few lines, declared that the land had passed from Mexico to Peña; and they conclude as follows:

"It is the opinion of this Court that the original claim is a good and valid claim, and that the same should be, and is hereby confirmed. *Decree of the District Court affirmed.*"

Here we find the District Judge declining to pass upon the mesne conveyance to Vallejo, and deciding simply upon the validity of the Mexican grant; and we find the Supreme Court approving his course. In this case, that Court again decide that the only duty with which the Commission was charged was to investigate and decide upon the validity of the Mexican grant. If they attempted to do more, it was *coram non judice*, and if they did not do that, they did nothing.

See the case of *United States* vs. *Morillo*, 1 Wallace, 709. Here was a confirmation to Morillo by the District Judge of the Southern District of California. The United States appealed. The Attorney-general stated that the land covered by the grant had been confirmed to one Yorba; that whether it belonged to Yorba or Morillo, the United States neither knew nor cared; that the decision in the Yorba case operated a relinquishment upon the part of the Government, and terminated the jurisdiction of the Commission over the subject matter.

Justice Miller, in delivering the opinion of the Court, says:

"On the part of the appellant, the point principally relied on is, that this Court has no jurisdiction of the case; and the ground on which this point is based is the fact that the District Court has already confirmed the claim of another party, which covers the land now claimed by the appellees in this case. It is, therefore, say the counsel, a mere contest between individuals as to who is the real owner of the land, in which the Government has no interest, and its decision is not necessary to separate the lands of the United States from those held by private parties.

"We concur entirely with counsel, both in the reasoning and the conclusion above stated.

"The Act of March, 1851, under which these proceedings were had, contemplated nothing more than the separation of the lands which were owned by individuals, from the public domain. This is clearly expressed in the 13th section of that Act. The 15th section declares that the final decree, rendered in these proceedings, and the patents issued under them, shall be conclusive between the United States and said claimants *only*, and shall not affect the interest of third parties.

"We, therefore, agree with counsel for the appellant, that when the Government no longer claims that the land is public land, the right of the United States to contest the case further, ceases, and this Court will not entertain jurisdiction to determine to which of two private claimants it may belong.

"*When the Government no longer claims that the land is public land, the right of the United States to contest the case further, ceases.*"

When the District Judge decided that the grant to Ramon Mesa was a good and valid grant, the land embraced in it became private land, and the right of the United States to contest the case further, ceased; nor has the Government, to this day, set up any claim thereto.

Even if it be true that Mesa lost his right by failure to present, there is nothing in this record to show it. The grant was offered in evidence, and the plaintiff deraigned title from the grantee. No presumption arises either that the claim was rejected or that it lapsed from failure to present.

It was argued in the Court below that the District Court could not go beyond the prayer of the petitioner, and that that was limited to a confirmation to him of a portion of the land granted to Mesa.

The vice of this argument lies in confounding these extraordinary proceedings before this extraordinary tribunal, with an action instituted in a common law court. There is no analogy between the two. The Act of 1851 provides, simply, for the manner in which Mexican grants may be brought before the Board; they must be presented, and the person presenting must have some interest in having the grant confirmed. The proponent may be either the grantee or one claiming under him. In the latter case he must make out a *prima facie* case of interest; for this purpose he may use his mesne conveyance; but, as the Court said in *Castro* vs. *Hendricks*. this derivative title can have no other effect than to give the Commissioners jurisdiction of the Mexican grant. The prayer of Vasques is surplusage. Having brought the grant before the commission, his *role* was completed. Suppose Mesa had presented his grant, and prayed that only so much of the grant should be confirmed as he had not alienated. To such a request the Commission would have answered: "As the agents of the Government, we are charged with the duty of passing upon the validity of the Mexican grant you have laid before us. We find it to be a good and valid grant. With your alienations we have nothing to do, as the Government has not charged us with the determination of any such question; or, to use the language of the Court, in *Castro* vs.

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Hendricks, the Government itself is not charged with the determination of any such question." Undoubtedly, such would have been the answer to such a prayer on the part of Mesa. Why should not the same answer have been returned to Vasques ?

But it is argued, admitting that the District Court, on the presentation of Vasques, might have confirmed the Mexican grant, it has failed to do so. If it be true that the Mexican grant was properly brought before the Commission, and has not been disposed of in the only manner in which the Commission could dispose of it, then it follows that it is still in the District Court. But treating everything in the decree of the third of March, 1856, as far as it relates to the derivative title of Vasques, as mere surplusage—as, under the authorities we have cited, it must be considered—there is still enough in it to show that the Judge had considered the validity of the grant to Mesa, and had judicially determined that the grant was valid. There are no set terms for a decree of confirmation. A decree has been rendered. In that decree, is the grant to Mesa referred to ? Is the question of its validity decided ? Let us see.

In the first place, if the Judge had merely determined that Vasques had a title, he would, in so deciding, necessarily have decided that the grant to Mesa, upon which the claim of Vasques is based, was a good and valid grant. But he has not left this matter to inference. He says: "The land of which confirmation is hereby made is a portion of a tract called Soulajulle, in Marin County, (granted to Jose Ramon Mesa, March 29th, 1844), and is bounded and described as follows :"

Then, again, the Judge declares, in effect, that he determines simply the validity of the original grant; for he says that, if the land conveyed by Mesa to Vasques is within the limits of Mesa's grant, then the United States disclaims any interest in it. What is this but a determination that the United States has no interest in any portion of the land included in the grant to Mesa; and what but this could be the effect of any words of confirmation than could have been used?

The United States was "charged," by the treaty of Guadalupe Hidalgo, and by the law of nations, with the duty of respecting private rights acquired under the government to which she succeeded. To enable her to discharge this duty, she raised this Commission. She selected the arbiters between her and the Mexican claimants. What a figure she would cut should she now prefer a claim to any portion of the land which an arbiter of her own selection has declared to have passed to Mesa by a good and valid grant from the Mexican Government! To any Attorney-general, if such could be found, who would prefer such a claim on her behalf, we would reply, in the language of the Supreme Court in the Fossatt case:

"The object of this inquiry (speaking of the investigation authorized by the Act of 1841) was not to discover forfeitures, or to enforce rigorous conditions. The declared purpose was to authenticate titles, and to afford the solid guarantee to rights which ensues from their full acknowledgment by the Supreme authority:"

And again :

"The United States did not appear in the Courts as a contentious litigant, but as a great nation, acknowledging their obligation to recognize as valid every authentic title, and soliciting exact information to direct their Executive Government to comply with their obligations."

That the claims upon which the Commission was authorized to pass, by the Act of 1851, (from which the original Board, the District Judge, and the Judges of the Supreme Court derive all their powers over the subject-mater) were the Mexican and Spanish grants, and not the titles derived from these grantees, is a conclusion we must arrive at by reasoning *a priori*, independently of the numerous authorities we have cited to that effect.

First, as a matter of constitutional power, the Congress of the United States could not deprive citizens of the State of California of the right to litigate rights of property in their State Courts.

Secondly, it is very clear, from the admitted object and wording of the Act, that it was the government grants *only* that were to be presented and passed upon. The Government in this Act, "solicited exact information to direct their executive Government to comply with their obligations." No information as to subsequent alienations could throw any possible light upon the subject which, alone, the Commission was charged to investigate; therefore, no such information was required; or, being given, it afforded no foundation for action.

Thirdly, the time allowed for presentation was two years—a reasonable time, as was then supposed, in which to dispose of the comparatively few grants made by Spain or Mexico; a most absurd period in which to present and consider the innumerable mesne conveyances that might have sprung from those grants.

Nor is it to be imagined that Congress intended the validity of the original grant should be passed upon a thousand times, if some original grantee should have happened to alienate in as many subdivisions. What a mass of labor this would have thrown upon the Commission, and what confusion might not have been thereby engendered! In one case, sufficient proofs being adduced, the grant would have been declared valid; in another, more carelessly conducted, the grant might have been rejected.

Of the difficulties arising out of the attempt to confirm distinct portions of a grant to the several alienees of the grantee, the Judge who confirmed this grant seems to have been aware; in fact, he protests against such a practice. In a case entitled *United States* vs. *Watkins*, No. 352, on objections to survey, Judge Hoffman, in his opinion on file, referring to the fact that the practice had grown up of confirming portions to individual claimants, says:

"It is much to be regretted that the claims presented to the Board, and the proceedings thereon, should have been allowed to assume a form so productive of confusion and embarrassment.

"It would seem that the only interest of the United States is to ascertain the validity and boundaries of the original Mexican grant; with its subsequent distribution among various purchasers the United States have no concern, and any disputes among them should, appropriately, be settled before the ordinary tribunals. If, then, the various claims for portions of a single rancho had been consolidated into one suit, in which, after ascertaining the validity of the original title, a single decree for the whole tract had been entered, and one survey made, by which the exterior boundaries had been established, the United States would have attained every object which either its interests or its duty required, and the Court would have been saved the embarrassment of being obliged, under the law, to treat the surveys of some of the sub-claims as final and correct, because not objected to in time, and to set aside or modify others, if duly objected to and returned into Court, while all depend on identically the same considerations."

If we have succeeded in showing that the grant to Mesa was virtually confirmed by the District Judge, deraigning title, as the plaintiff does from Mesa, we established the plaintiff's title, and it was error in the Court below to grant the nonsuit.

All of which is respectfully submitted.

C. T. BOTTS,
Of Counsel for Plaintiff in Error.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

DANIEL BROWN,
Plaintiff in Error,

VS.

JOSHUA S. BRACKETT, et als.
Defendants in Error.

POINTS AND AUTHORITIES OF PLAINTIFF IN ERROR.

C. T. BOTTS,
Counsel.

SAN FRANCISCO:
H. S. CROCKER & CO. PRINTERS.
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VS.

JOSHUA S. BRACKETT ET ALS.,
Defendants in Error.

POINTS OF PLAINTIFF IN ERROR.

I.

The State Court misconstrued the Act of Congress of the 3d of March, 1851, entitled "An Act to ascertain and settle private land claims in the State of California," which erroneous construction was adverse to the rights of the plaintiff in error.

II.

The said Act of 3d of March, 1851, created a special tribunal with limited and specified powers, and the Judge of the U. S. District Court and the Judges of the Supreme Court of the United States under and by virtue of said Act, were made appellate branches of this same special tribunal.

III.

The tribunal so established under the said Act of the 3d of March, 1851, both the original Board of Commissioners, and the appellate Board, consisting of the Judge of the U. S. District Court, and the further appellate Board consisting of the Judges of the Supreme Court of the United States, were charged by said Act with the duty of passing on the validity of grants claimed to have been made by the Government of Mexico to individuals before the cession of California to the United States, and were not authorized to determine the validity of any alleged derivation of title from the Mexican grantee to any other person.

IV.

The decree rendered in the District Court in the case of *Vasques* vs. *The United States*, appearing in p. of Transcript, operated as a confirmation of the original grant of the Soulajulle Rancho to Ramon Mesa, and the plaintiff having deraigned title to the property in controversy from said Ramon Mesa, and the answer admitting the possession of the defendants, the plaintiff made out a *prima facie* case, and it was error in the Court below to grant the defendants' motion for nonsuit.

C. T. BOTTS,
Of Counsel for Plaintiff in Error.